

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5882 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UMBERGAON MANUFACTURERS ASSON

Versus

CHIEF EXECUTIVE

Appearance:

MR BR PARIKH for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/07/97

ORAL JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the respondents. Perused the Special Civil Application and heard learned counsel for the petitioner.

#. The present petition has been filed by the petitioner

challenging various notices containing bill and the directions issued by respondent No.2 demanding consolidated tax for the assessment year 1983-84.

#. In para-3 of the Special Civil Application, the petitioners stated that they have already filed Special Civil Application No.2096 of 1984 before this Court for quashing and setting aside the assessment list prepared by the respondent No.2 and various notices issued by the respondent No.2 upon the members of the petitioner No.1-Association demanding consolidated tax for assessment year 1982-83. That Special Civil Application has been admitted by this Court on 20th April 1984 and the order passed thereon reads as under:

"Rule to be heard with Special Civil Application No.4797 of 1983. Ad-interim injunction to the effect that the recovery of the tax demanded from the petitioner is stayed on the condition that they pay within one month from today 30% of the amount of tax demanded from them. It is clarified that if the petitioners succeed in the petition, the payment made by them will have to be adjusted towards total amount payable by them. If they lose in the petition, they will pay the difference with 12% interest thereon."

#. So, the Special Civil Application No.2096 of 1984 was ordered to be heard with Special Civil Application No.4797 of 1983. The Special Civil Application No.4797 of 1983 has been decided by this Court on 11.7.95. After decision of the said petition the petitioner No.1 herein who was the petitioner in Special Civil Application No.2096 of 1984, has withdrawn the said petition on 2.2.96. So when the petitioner No.1 has already withdrawn the Special Civil Application No.2096 of 1984 in which similar demand of consolidated tax from its members for the year 1982-83 has been challenged, this petition does not survive. Once the petitioner has unconditionally withdrawn the challenge to the demand of consolidated tax, then on the same cause of action the second petition is not maintainable. The learned counsel for the petitioner is unable to satisfy this Court how after the withdrawal of earlier petition with respect to same cause of action by the Association, second petition is maintainable.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

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